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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem

Report by the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 64/94, by which the Secretary-General was requested to report to the Assembly at its sixty-fifth session on the implementation of the resolution. The period covered by the report is 1 September 2009 to 19 August 2010.

On the basis of material gathered by the Office of the United Nations High Commissioner for Human Rights, the report addresses selected aspects of the human rights situation in the Occupied Palestinian Territory.

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I. Introduction

1. The present report addresses the implementation of General Assembly resolution 64/94, entitled "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem". The period covered by the report is 1 September 2009 to 19 August 2010. The information contained in the report is based on monitoring and other information-gathering activities carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations entities in the Occupied Palestinian Territory, in particular the Office for the Coordination of Humanitarian Affairs (see http://www.ochaopt.org). It also contains information received from Israeli and Palestinian non-governmental organizations, human rights defenders and media sources.

2. Some of the themes identified in resolution 64/94 are addressed in separate reports of the Secretary-General submitted to the General Assembly at its sixty-fifth session. These include the issue of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, which is addressed in the report of the Secretary-General pursuant to General Assembly resolution 64/93 (A/65/365) and the issue of the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories, addressed in the report of the Secretary-General (A/65/355) pursuant to General Assembly resolution 64/92.

3. The present report examines the following themes identified in resolution 64/94:

(a) Excessive use of force, including the killing and injury of civilians;

(b) Firing of rockets against Israeli civilian areas resulting in loss of life and injury;

(c) Restrictions on freedom of movement, including with respect to movement into and from East Jerusalem, and restrictions amounting to a blockade on the Gaza Strip.

4. The situation in the Occupied Palestinian Territory with respect to international human rights and international humanitarian law has also been reviewed in other recent reports of the United Nations. In particular, the status of implementation of the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48) is addressed in the report of the Secretary-General submitted pursuant to Human Rights Council resolution 13/9 (A/HRC/15/51) which updates the information contained in the report of the Secretary-General submitted pursuant to Council resolution S-12/1 on the same topic (A/HRC/13/55). A comprehensive review of the situation is contained in the report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/13/54).

II. Progress on the implementation of the resolution

A. Excessive use of force, including the killing and injury of civilians

5. Reports of the use of excessive force by Israeli authorities against the Palestinian civilian population continued to be received with frequency (see A/HRC/13/54). Incidences of excessive use of force typically occurred while Israeli authorities were operating checkpoints, detaining and interrogating Palestinians and responding to public demonstrations. Such incidences often resulted in the injury of civilians. Not infrequently, they also resulted in civilian deaths.

Killing of Palestinian civilians

6. According to information gathered by United Nations entities in the Occupied Palestinian Territory, the total number of Palestinian civilians killed by Israeli authorities during the period under consideration ranged from 15 to 18 persons.[1] Five were reportedly Palestinian children, including one seven-month-old infant.[2] The majority had allegedly been shot by Israeli authorities. Home demolitions, exposure to tear gas, prohibiting people from receiving medical treatment and other acts or omissions by Israeli authorities also resulted in the death of Palestinian civilians. As at the date of the present report none of the reported killings of civilians had led to a criminal investigation or to prosecutions for excessive use of force. Instead, according to the Office for the Coordination of Humanitarian Affairs and the non-governmental organization B'Tselem, there appears to have been impunity for Israeli authorities involved in the killing of Palestinian civilians.

7. It is relevant to note that, in its concluding observations following consideration of the third periodic report of Israel in July 2010, the United Nations Human Rights Committee expressed concern that Israel's targeting and extrajudicial execution of 184 persons in Gaza since 2003, had also resulted in the death of 155 additional individuals (see CCPR/C/ISR/CO/3, para. 10). In its report, the Committee called on Israel to protect every civilian's right to life and to establish an independent body to promptly and thoroughly investigate complaints about disproportionate use of force.

Injury of Palestinian civilians

8. Reports of Palestinian civilians injured by Israeli authorities were received on a regular basis throughout the period under consideration. It was not possible to conclude with absolute certainty that excessive force had been used in every case. The Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory recorded over 600 injuries to Palestinian civilians by Israeli authorities where excessive force appeared to have been used. According to the Office for the Coordination of Humanitarian Affairs, this included 102 injuries to Palestinian children.

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[1] According to reports from Israeli and Palestinian non-governmental organizations, the total number of Palestinian civilians killed by Israeli authorities during this period may be as high as 34.

[2] This case was reported by the Palestinian Center for Human Rights and documented by the Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory.

9. Many of the injuries occurred in connection with public demonstrations, whether against the construction of the barrier, home demolitions, the extension of Israeli settlements in the Occupied Palestinian Territory or actions of the Government of Israel concerning sites of religious importance to Palestinians. In its weekly report on the protection of civilians, the Office for the Coordination of Humanitarian Affairs highlighted the events that had occurred on 5 March 2010, when worshippers at the Al-Aqsa Mosque had protested against the decision of the Israeli Knesset to include the Al-Ibrahimi Mosque/Tomb of the Patriarchs in Hebron and Bilal Mosque/Rachel's Tomb in Bethlehem to the list of Israeli "national heritage sites". According to the Office for the Coordination of Humanitarian Affairs, 44 Palestinian civilians had reportedly been injured by Israeli authorities in that context, and 20 Israeli authorities had reportedly been injured by Palestinian protestors. A further eight Palestinian civilians had reportedly been injured in related demonstrations that had been held in the following days. There also appeared to have been impunity for Israeli authorities involved in the injury of the Palestinian civilians, according to the Office for the Coordination of Humanitarian Affairs and B'Tselem.

B. Firing of rockets against Israeli civilian areas resulting in loss of life and injury

10. In letters addressed to the United Nations High Commissioner for Human Rights, the Permanent Mission of Israel reported that rockets and mortars continued to be routinely fired from Gaza into Israeli civilian areas. A total of 68 separate incidents of rocket or mortar attacks fired from Gaza into Israel were reported between 1 September 2009 and 19 August 2010. Many of the incidents involved multiple rockets or mortar shells. The United Nations recorded the launching of 84 home-made rockets, 43 mortar shells and three grad rockets during the reporting period. It was not possible to determine whether the attacks had targeted military or civilian objectives. The type of rockets and mortars that were fired, however, are inherently indiscriminate and therefore violate international humanitarian law. Further, it has been alleged that such weapons are often launched from areas populated by civilians (see A/HRC/12/48, paras. 439-498), which is also contrary to international humanitarian law.

11. On 18 March 2010, a 30-year-old man died in Netiv Ha'asara, Israel, as a result of a rocket attack launched from Gaza. In addition, multiple indiscriminate rocket attacks caused physical injury to civilians and damaged buildings and other infrastructure in areas within their range. Such attacks also generally cause serious psychological trauma to the civilian population.

C. Restrictions on freedom of movement, including with respect to movement into and from East Jerusalem and restrictions amounting to a blockade on the Gaza Strip

Freedom of movement in the West Bank

12. An improvement in freedom of movement for Palestinians in the West Bank was documented during the reporting period. The Office for the Coordination of Humanitarian Affairs reported that the improvement was attributable to a package of

measures implemented by the Government of Israel, which had resulted in the removal of physical obstacles, conversion of permanent checkpoints into "partial" checkpoints, easing of controls at selected permanent checkpoints, lifting of vehicle permit requirements to enter and exit Nablus City and the opening of three sections of roads to Palestinians. The main impact of the measures was to significantly reduce travel time between cities and towns, thereby enhancing access by Palestinians to services, places of work and markets. In addition, on 24 May 2010, Israeli military authorities had announced their intention to implement another package of measures that would further decrease existing restrictions on freedom of movement for Palestinians in the West Bank.[3] The Office for the Coordination of Humanitarian Affairs reported that if the measures were fully implemented, the total number of physical obstacles would be at its lowest level since 2005.

13. However, a broad range of restrictions on freedom of movement remained in place throughout the Occupied Palestinian Territory. The principal restrictions consisted of physical obstacles, such as checkpoints, roadblocks, and the barrier, and administrative restrictions (see A/HRC/13/54, paras. 37-39), such as prohibited roads and permit requirements. In August 2010, as documented by the Office for the Coordination of Humanitarian Affairs, there were approximately 500 obstacles to movement in the West Bank, including 65 permanently staffed checkpoints, 22 "partial" checkpoints (staffed on an ad hoc basis) and 418 unstaffed obstacles (roadblocks, earthmounds, earth walls, road gates, road barriers and trenches). According to the Office for the Coordination of Humanitarian Affairs, this constituted a 20 per cent decrease in the total number of physical obstacles from the previous year. Following an announcement by the Israeli military on 24 May 2010, the number of physical restrictions has continued to be adjusted. The number of permanently staffed checkpoints has decreased by 1, to a total of 64, whereas the number of "partial" checkpoints has increased by 3, to a total of 25. The intention to eliminate 60 roadblocks was also stated in the package of measures announced on 24 May 2010.

14. It should be noted that, in addition to the physical restrictions mentioned above, the Israeli military frequently establishes ad hoc checkpoints ("flying" checkpoints). The unpredictability of "flying" checkpoints often results in longer, unexpected delays and hence an even greater burden on the daily life of Palestinians than permanent checkpoints. According to the Office for the Coordination of Humanitarian Affairs, an average of 310 "flying" checkpoints are set up every month. The primary objectives of such checkpoints appear to be to maintain a level of control over areas that have previously had a permanent checkpoint or roadblock, or to disrupt the convening of regular public demonstrations. They have also been set up in areas where Israeli vehicles have been subjected to stone throwing.

Movement into and out of East Jerusalem

15. Movement into and out of East Jerusalem for Palestinians did not improve during the reporting period. The barrier, checkpoints and restrictive permit system

[3] See Israeli Defense Forces, "Meeting between Israel Defense Forces OC Central Command and Palestinian Officials results in announcement regarding easing measures" (24 May 2010), available from http://idfspokesperson.com/2010/05/24/meeting-between-idf-oc-central-command-and-palestinian-officials-result-in-announcement-regarding-easing-measures-24-may-2010/.

severely limited such movement. Palestinians with West Bank identification continued to be generally barred from entering East Jerusalem. Those who obtained the requisite permits to enter East Jerusalem were only permitted to use 3 of the total of 16 checkpoints along the barrier, and then were only allowed to enter on foot following an extensive and intrusive examination.

16. The barrier continued to create strenuous difficulties for Palestinian communities on either side. Palestinians with West Bank identification who were living on the "Jerusalem" side of the barrier were greatly restricted in their ability to pass to the "West Bank" side, thus inhibiting their access to, among other things, family, education, work and services. Similarly, Palestinians with Jerusalem identification who were living on the "West Bank" side of the barrier, but within the city's boundaries, were forced to cross checkpoints to access other parts of the city. Moreover, a number of Palestinian communities with historical connections to Jerusalem have been separated therefrom due to the barrier. The Office for the Coordination of Humanitarian Affairs reported that, as a result, many Palestinians with Jerusalem identification have had to move from their communities to areas within the Israeli-defined municipal boundary.

Restrictions amounting to a blockade on the Gaza Strip

17. On 20 June 2010, the Government of Israel announced a new civilian policy towards the Gaza Strip, as contained in the Israeli Security Cabinet decision of 20 June 2010, which led to a significant increase in the quantity and types of goods allowed entry into Gaza. The non-governmental organization Gisha: Legal Center for Freedom of Movement reported, however, that although the decision called for "streamlining the entry and exit policy for people on the basis of humanitarian and medical reasons and for international aid organizations recognized by the Government of Israel", the policy did not change the restrictions on freedom of movement to and from Gaza. Such restrictions continue to affect Palestinians, not only those living in Gaza but also Palestinians from the West Bank, including East Jerusalem, and abroad. In relation to medical cases, widely respected national and international non-governmental organizations, such as Physicians for Human Rights, Adalah and Al-Mezan, asserted that Israeli authorities had routinely denied permits even when medical treatment outside of Gaza was required. Furthermore, Israeli authorities maintained an absolute ban on family visits of Palestinians living in the West Bank to their relatives in Gaza, and vice versa. Likewise, the ban on students from Gaza attending universities elsewhere in Palestine or abroad, with some exceptions, was maintained and reaffirmed by the High Court of Justice.[4] In a positive development, the small number of businessmen allowed to exit Gaza into Israel has steadily increased since June.

18. In addition to restrictions on movement to and from Gaza, the Israeli military enforced limitations on freedom of movement within the Gaza Strip. Although the Government of Israel has not officially confirmed the specific parameters of the limitations in force, a recent study published by the Office for the Coordination of Humanitarian Affairs and the World Food Programme (WFP) estimated that, since 2008, Palestinians had been totally or partially prevented from accessing land located up to 1,000-1,500 metres from the Green Line (depending on the specific area), and sea areas beyond three nautical miles from the shore. This equals an estimated 17 per cent of the total land mass of Gaza — 35 per cent of its agricultural land, and 85 per cent of the maritime areas in which Gazans are entitled to carry out fishing activities pursuant to

[4] See Israeli High Court of Justice, *Fatma Sharif v. Defense Ministry*, 6 July 2010.

the Oslo Agreements. Negative impacts that have resulted from these restrictions on movement within Gaza include greatly diminished agricultural and fishing industries, with concomitant decreases in the Gazan economy and livelihoods. Moreover, the lack of clear guidelines from the Israeli military as to the precise restrictions in force — restrictions that are often enforced by opening live fire — has led to the death and injury of civilians.[5]

III. Recommendations

19. **The Government of Israel should take immediate actions to prevent further incidences of excessive use of force against Palestinian civilians. Such actions should include comprehensive training in international human rights standards relevant to law enforcement for Israeli authorities involved in security operations in the Occupied Palestinian Territory. They should also include efforts to eliminate impunity for violations that result from excessive use of force, in particular by carrying out independent and impartial investigations into credible allegations of excessive use of force and, where allegations are substantiated, criminally prosecuting perpetrators.**

20. **The firing of indiscriminate rockets and mortars into southern Israel must stop. The launching of such weapons has resulted in death, injury, damage to infrastructure and general terror among the civilian population, in flagrant violation of international humanitarian law. All relevant parties on the Palestinian side should make urgent, vigorous efforts to end the firing of such weapons.**

21. **While welcoming the progress that has resulted from recent measures implemented by the Government of Israel, much remains to be done to fulfil the right of Palestinians to freedom of movement. As an initial step, Israel should implement further measures to remove physical restrictions on freedom of movement throughout the West Bank, including East Jerusalem, and ensure that all relevant administrative rules and requirements are consistent with international human rights and humanitarian laws. Further, Israel should cease construction of the barrier and dismantle portions already built in the Occupied Palestinian Territory, in accordance with the International Court of Justice advisory opinion of 9 July 2004, on legal consequences of the construction of a wall in the Occupied Palestinian Territory. In relation to the Gaza Strip, Israel must immediately and publicly clarify the restrictions it intends to enforce on freedom of movement within Gaza and publicly issue relevant guidelines. Such restrictions should not be enforced, in the first instance, by opening live fire, and their parameters should give due consideration to the Gazan agricultural and fishing industries. Finally, and again noting recent progress in this area as a result of positive measures implemented by the Government of Israel, Israeli authorities should place priority on the full implementation of Security Council resolution 1860 (2009) and on reopening the crossing points in line with the 2005 Agreement on Movement and Access between the Palestinian Authority and Israel.**

[5] The Office for the Coordination of Humanitarian Affairs also noted, in this regard, the role of Palestinian armed groups in increasing risks to civilians in the areas subject to restrictions by the Israeli military, as a result of carrying out military activities in the vicinity.